

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking Concerning
Energy Efficiency Rolling Portfolios,
Policies, Programs, Evaluation, and
Related Issues.

Rulemaking 13-11-005
(Filed November 14, 2013)

**REPLY COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES
ON PROPOSED DECISION PROVIDING GUIDANCE
FOR INITIAL ENERGY EFFICIENCY ROLLING
PORTFOLIO BUSINESS PLAN FILINGS**

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I. INTRODUCTION

Pursuant to Rule 14.3(d) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates submits the following reply comments on Administrative Law Judge ("ALJ") Julie Fitch's *Proposed Decision Providing Guidance for Initial Energy Efficiency Rolling Portfolio Business Plan Filings* ("PD").

ORA recommends the Commission adopt the PD and make the following recommendations:

- The PD should be modified to adopt TURN's recommended clarifications to the summary of the new policies regarding third party program delivery;
- The PD should clarify that codes and standards advocacy remains an important strategy for achieving energy efficiency savings by maintaining current spending levels and continuing to track program performance;
- Parties misrepresent the extent of the exceptions to the default existing conditions baseline policy in the PD.

II. DISCUSSION

A. **The PD should be modified to adopt TURN's recommended clarifications to the summary of the new policies regarding third party program delivery**

The PD makes significant changes to the Commission's requirements regarding the role of third parties in program design and delivery. The PD establishes the principle that "all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personnel."¹ In addition, the PD would require that at least 60 percent of Investor-Owned Utility ("IOU") budgets be designed and implemented by third parties by 2020, up from a current 20 percent minimum. In opening comments,

¹ PD at p. 63

ORA noted that the “60 percent target is inconsistent with the logic in the PD that establishes a rebuttable presumption that implementation activities would be more efficiently performed by third parties through a competitive solicitation process.”² ORA instead argued that 100 percent of programs should be outsourced.

TURN provided a compelling analysis in opening comments, stating that “the new policy regarding third party programs is first and foremost a change in the role of third parties in program design and delivery, which in turn should drive the anticipated change in budget allocation.”³ The primary policy determination is that all third party programs be bid out unless an IOU shows it can implement more effectively and at lower cost, while the 60 percent third party budget target is a minimum compliance benchmark below which the Commission would presume non-compliance with the third party policy. As TURN points out, there is no record supporting the 60 percent figure and the actual budget allocation consistent with full compliance with the new third party policy could be substantially higher than the PD’s 60 percent floor.⁴ In essence, the 60 percent threshold is an indicator of a priori non-compliance, but should not be interpreted as sufficient to demonstrate full compliance with the third party policy.

As such, the PD should be modified to adopt TURN’s recommended clarifications to the summary of the new third party policy⁵ in order to make clear that all program design and delivery be provided by third parties, with the exception provided in the PD. To avoid confusion, the Commission should direct the IOUs to bid out their entire portfolios by 2020 with a mechanism for the IOUs to demonstrate the reasonableness of any IOU implementation activities.

² ORA Opening Comments at p. 3.

³ TURN Opening Comments at p. 4.

⁴ TURN Opening Comments at p. 5.

⁵ TURN Opening Comments at p. 6.

B. The PD should clarify that codes and standards advocacy remains an important strategy for achieving energy efficiency savings by maintaining current spending levels and continuing to track program performance

A number of parties expressed concern in opening comments that the removal of codes and standards goals could substantially reduce the IOUs' motivation to vigorously support advocacy for new codes and standards.⁶ Parties additionally worry that the Commission will withdraw support for tracking and attributing the impact of codes and standards if codes and standards savings are no longer credited in goal achievement.⁷

ORA has supported the removal of codes and standards from goals in order to alleviate double-counting concerns with the shift to a default existing conditions baseline policy. However, to the extent that the PD could be interpreted as indicating that the IOUs should shift funding or focus away from codes and standards advocacy efforts, it should be amended to clarify that codes and standards remains an important and cost-effective strategy for achieving energy efficiency savings. In order to underline its continuing commitment to codes and standards advocacy and ensure the IOUs remain motivated in their codes and standards advocacy activities, the PD should be amended to:

- Emphasize that codes and standards advocacy impacts will continue to be quantified and attributed by Commission Staff through codes and standards advocacy impact evaluations;
- Require that Commission Staff and IOUs continue to report cost-effectiveness metrics that include codes and standards in addition to reporting cost-effectiveness metrics for programmatic efforts alone;
- Direct the IOUs to spend no less annually on codes and standards advocacy than the average annual codes and standards advocacy expenditures for program years 2013-2015.

⁶ NRDC Opening Comments at p. 3; Energy Solutions Opening Comments at p. 8; McHugh Energy Opening Comments at p. 10; ASAP Opening Comments at p. 3.

⁷ McHugh Energy Opening Comments at pp. 4-5.

In addition, given the substantial concerns of double-counting and stranded savings raised in the PD and by parties, the PD should be modified to direct Commission Staff to study and quantify the unrealized or stranded savings in existing buildings currently attributed as realized codes and standards savings. The goal of such a study would be to enable appropriate adjustments to ex post codes and standards savings estimates that would enable more accurate energy savings accounting in both ratepayer-funded programs and in the demand forecast. As such, a key parameter of interest for such a study would be the assumed turnover rates of building equipment and systems that inform estimates of savings from new codes and standards in existing buildings.

C. Parties misrepresent the extent of the exceptions to the default existing conditions baseline policy in the PD

In opening comments on the PD, a handful of parties claim that the PD's default existing conditions baseline policy only applies to a small proportion of PA portfolios and suggest that it may not comply with the Assembly Bill ("AB") 802.⁸ Other parties argue that the PD's baseline policy is reasonable and conforms to the intent of AB 802.² Parties' arguments concerning the interpretation of AB 802, the reasonableness of a default existing conditions baseline policy, and the scope of any exceptions to it are already amply represented on the record in this proceeding.

Programs that utilize accelerated replacement and dual baseline treatment effectively use the existing condition as the principal baseline for calculating savings. ORA observes that parties' claims that the PD limits the existing conditions baseline to a small proportion of program activities are factually inaccurate because they fail to acknowledge that dual baselines start from existing conditions. In particular, SoCalGas', SCE's, and Ecology Action's claims regarding the scope of the existing conditions

⁸ SoCalGas Opening Comments at p. 12; SCE Opening Comments at p. 8; Ecology Action Opening Comments at p. 5.

² SDG&E Opening Comments at p.2; ORA Opening Comments at p. 8.

baseline policy ignore the PD’s classification of existing conditions as the first baseline for all accelerated replacement and repair eligible projects in both deemed and calculated programs as a part of a dual baseline treatment.¹⁰ These concerns are particularly surprising given that accelerated replacement programs are not a new part of program administrators’ portfolios and accelerated replacement claims are routinely made by all four IOUs – including SCE and SoCalGas through early retirement and calculated programs – as well as by direct install implementers such as Ecology Action.

The PD applies a default existing condition baseline policy broadly and with appropriate exceptions in compliance with AB 802 and accurately reflects the record on this issue.

III. CONCLUSION

For the foregoing reasons, ORA respectfully recommends that the Commission adopt the PD with the modifications described above.

Respectfully submitted,

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¹⁰ Accelerated replacement projects (also known as “early retirement”) –where a program induces customers to replace equipment with remaining useful life – have been permitted since at least 2010 to utilize existing conditions as a first baseline for calculating savings. The PD also establishes a new measure treatment – repair eligible – that will permit the use of an existing conditions baseline as a first baseline for situations in which customers face a choice between repairing existing equipment and replacing it with new, high-efficiency equipment.